


IV. Conclusion

In view of the foregoing, the Presiding Judge is respectfully requested to grant the captioned application for renewal of license conditioned by Southwestern returning KLZK to the air by February 7, 1997.

Respectfully submitted,

SOUTHWESTERN BROADCASTING
CORPORATION

By: 
Lawrence J. Bernard, Jr.
5227 Chevy-Chase Parkway, N.W.
Washington, D.C. 20015
(202) 237-8215

Its Counsel

EXHIBIT A

(9) (A)

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

/ 1 DEC 1993

IN REPLY REFER TO:
1800B3-MFW

James P. Riley, Esq.
Fletcher, Heald & Hildreth
11th Floor, 1300 North 17th Street
Rosslyn, Virginia 22209

Lawrence J. Bernard, Esq.
1300 19th Street, N.W.
Suite 240
Washington, D.C. 20036-1609

Southwestern Broadcasting Corporation
P.O. Box 2401
Lubbock, Texas 79408

In re: KMMX(FM), LaMesa, Texas
West Texas Broadcasting Co,
Inc.

KIOL-FM, LaMesa, Texas
100.3 Radio, Inc.

KLZK(FM), Brownfield, Texas
Southwestern Broadcasting
Corporation

Gentlemen:

This letter refers to the current allotment problem involving the above-referenced stations.

Background. West Texas Broadcasting Co., Inc.'s ("West Texas") station, KMMX(FM) (formerly KLSC(FM)), was licensed to LaMesa on Channel 262C1 from a site north of the community. See BLH-870509KA, granted on March 18, 1988. 100.3 Radio, Inc.'s ("100.3 Radio") station, KIOL-FM (formerly KUFO(FM)), was licensed to LaMesa on Channel 284C1 from a site south of the city. See BLH-830516AE, granted February 16, 1984.¹ Station KLZK(FM) was formerly licensed to Brownfield on Channel 280A.

Due to a concentration of Class C stations, KMMX "discovered that the station's signal could not be received in substantial areas within the city of Lubbock, Texas,

¹ For the sake of clarity, only the stations' current call signs will be used.

even though its signal intensity was 3.16 mV/m or greater...."² In order to improve KMMX' coverage of Lubbock, Texas, KMMX and KIOL-FM agreed to trade frequencies and filed with the Commission on September 9, 1987 "Joint Request for Order Modifying Licenses to Specify New Operating Facilities." In that request, the parties stated that they would continue to operate with presently authorized facilities (antenna site, power, antenna height) but simply switch frequencies: KMMX would operate on Channel 284C1 from its site north of LaMesa rather than its licensed 262C1, and KIOL-FM would operate on Channel 262C1 from its site south of LaMesa rather than its licensed 284C1. Approval of such a plan would eliminate the need for rulemaking and avoid subjecting the proposals to the Commission's "cut-off" rules.

The Chief, Audio Services Division, denied the request as inappropriate and unjustified by letter dated November 20, 1987 (reference 8920-MW). However, it was suggested that the parties could structure a "sale and leaseback" transaction in which each party would: (i) assign the permit/license and sell some or all of the assets of the respective stations to each other; (ii) exchange call signs and lease back each other's technical facilities.

KMMX and KIOL-FM submitted such proposals on December 14, 1987. See application nos. BAPH-871214GI/BPH-871214IE and BALH-871214GH/BPH-871214ID, respectively. The Chief, Audio Services Division approved the assignment applications and granted special temporary authorization ("STA") to KMMX and KIOL-FM operate for 180 days with the facilities specified in the modification applications. Letter to Barry W. Sheridan, Esq. and Lawrence J. Bernard, Esq., reference 8920-MW, (Chief, Audio Services Division, March 25, 1988). A request for extension of these STA's, which was filed on September 14, 1988, is currently pending. As a result of these transactions, 100.3 Radio now owns the license and assets for the station north of LaMesa operating on Channel 262C1 formerly owned by West Texas and has an STA (with pending request for extension) and pending application to operate with its formerly licensed technical facilities south of LaMesa on the new channel. Similarly, KMMX owns the license and assets for the station south of LaMesa operating on Channel 284C1 formerly owned by 100.3 Radio and has an STA (with pending request for extension) and pending application to operate with its formerly licensed technical facilities north of LaMesa on the new channel.

On the same day that KMMX and KIOL-FM filed their assignment/modification proposals, the Commission adopted a Notice of Proposed Rule Making in MM Docket 87-603, 3 FCC Rcd 231 (Chief, Allocations Branch, 1988). In this document, which was issued pursuant to a request by then-licensee Brownfield Broadcasting Corporation, the Commission proposed to upgrade the allotment for station KLZK(FM) (then KKTC(FM))

² See the Engineering Statements of Charles F. Ellis and Robert M. Silliman, attached as Exhibits B and C to the original request for an order to modify licenses. The interference was allegedly caused in part by an intermodulation problem resulting from the combination of an AM signal on 950kHz with a spurious emission by an FM station on 101.1 MHz on the frequency of 100.15 MHz. This problem was subsequently resolved, but KMMX continued to experience severe reception problems in the Lubbock area. We note here, as we did in our November 20, 1987 letter, that KMMX is not licensed to Lubbock and has no obligation or right to provide service to that community.

from Channel 280A to Channel 282C2. In keeping with the Commission's policy, the KMMX proposal, although listed in the Commission's data base, was treated as a mere "site preference"³ and the proposal to upgrade the KLZK allotment was adopted on September 28, 1988. Report and Order in MM Docket No. 87-603, 3 FCC Rcd 6158 (Deputy Chief, Policy and Rules Division, 1988). The station was given 90 days to file a minor change application to implement the upgrade. That application was filed on October 26, 1989, but was dismissed by letter of March 17, 1992 due to its creation of a short-spacing with station KKIK(FM), Lubbock, Texas. Letter to Southwestern Broadcasting Corp., reference 8920-JAG (Chief, FM Branch, March 17, 1992).

Additionally, we note that station KLZK is currently silent and has been off the air since October 30, 1988.⁴ Southwestern acquired KLZK from Brownfield Broadcasting Corporation on July 1, 1990, pursuant to the approval of assignment application no. BALH-900223HF, granted on May 4, 1990. On December 2, 1992, an operational status inquiry letter was sent to Southwestern summarizing the station's recent history and presenting three options: (i) notify the office of the Chief, Audio Services Division, that the station has resumed Class A operations; (ii) notify the Chief that the station would immediately resume operations; or (iii) request special temporary authorization to remain silent under 47 C.F.R. § 73.1635. In a response dated January 6, 1993, Southwestern chose the third option, requesting special temporary authorization to remain silent for 6 months "or until such time as a construction permit for 282C2 is issued with 90 days to construct."

Discussion. The primary problem here is that KMMX's proposal to operate on Channel 284C1 from its current site north of LaMesa is short-spaced by 49.4 kilometers to the higher-priority reserved upgrade and frequency change allotment for KLZK in Brownfield.⁵ While several parties have proposed solutions to this unfortunate circumstance,⁶ the parties have not submitted a joint proposal. Furthermore,

³ See generally the Notice of Proposed Rulemaking in MM Docket No. 91-348, 6 FCC Rcd 7346 (1991).

⁴ KLZK was granted special temporary authorization to remain silent by letter dated January 4, 1989. Letter to Brownfield Broadcasting Corp., reference 8920-GDG (Chief, FM Branch, January 4, 1989). That STA expired on January 15, 1989, and an extension was not sought. However, Southwestern has requested a new STA as discussed infra.

⁵ The spacing required by 47 C.F.R. § 73.207 is 79 kilometers, while the actual spacing proposed in KMMX' application is 29.6 kilometers. KMMX has been formally informed of this deficiency. Letter to West Texas Broadcasting Co., Inc., reference 8920-JAG (Chief, FM Branch, March 17, 1992). Even as a Class A facility, the Brownfield station would still be 45.4 kilometers short-spaced to KMMX's proposal.

⁶ Thomas Crane of KLZK suggested a solution by letter dated January 10, 1990, which proposes that: (i) KIOL-FM would surrender its STA and modification application and return to its licensed operation on Channel 284C1; (ii) KMMX would likewise return to its licensed operation on Channel 262C1; and (iii) KLZK

engineering studies indicate that there are no other available frequencies to which either KMMX or KLZK could move which would resolve the spacing deficiency.

Because there appears to be no workable solution to this problem, we see no recourse at this time but to: (i) ultimately cancel the extant STA's for both KMMX and KIOL-FM; and (ii) dismiss the mutually contingent modification applications. KMMX's modification application cannot be granted, nor can it be used further to delay the implementation of upgraded service to Brownfield; because KMMX's modification cannot be approved, KIOL-FM's application (which specifies the technical facilities acquired by KMMX via the assignment application) cannot be approved. KMMX and KIOL-FM will then be required to operate with the facilities each acquired pursuant to BAPH-891214GI and BALH-891214GH, respectively.⁷ Because extension of the March 25, 1988 STA's for KMMX and KIOL-FM was requested but has not yet been granted, the stations currently have authority to operate with the facilities specified in BPH-871214ID and BPH-871214IE. In order for the stations to organize their affairs and plan future action, we will extend the STA's for 90 days from the date of this letter, but hereby advise the stations that requests for further extension will not be granted.

The second problem involved here is KLZK's failure either to implement the upgrade or resume operation with its currently authorized Class A facilities. In its January 6, 1993 response/request for special temporary authorization to remain silent, KLZK details the perceived problems involving the station's future upgrade, but fails to describe why the station must remain silent while these problems are

would then switch frequencies with KMMX such that KLZK would operate on Channel 262C1 and KMMX on Channel 284C. Lawrence Bernard, Jr., counsel for KMMX, submitted an alternate proposal to KIOL-FM and KLZK on June 17, 1992, pursuant to which: (i) the parties would join in a petition for rulemaking to delete Channel 262C1 from LaMesa and allot it to Tahoka, Texas; (ii) when the rulemaking is granted, 100.3 Radio (licensee of KIOL-FM) would file a minor change construction permit application to implement the rulemaking; (iii) when the permit is issued, 100.3 would assign the KIOL-FM Channel 262C1 license back to West Texas, and West Texas would assign the KMMX Channel 284C1 license back to 100.3 Radio, provide it with a channel 284 antenna, and provide for other changes (as well as paying all costs involved) such that KIOL-FM could commence operations on Channel 284C1 on the effective date of the assignment. Mr. Bernard's solution presumes that KIOL-FM is currently licensed on Channel 262C1 and that KMMX is currently licensed on Channel 284C1.

⁷ We realize that this will defeat KMMX's initial purpose in proposing the frequency switch in 1987, as it will cause KMMX to operate what were formerly KIOL-FM's facilities south of LaMesa and further from Lubbock than it originally operated. However, West Texas and 100.3 may reconvey their respective stations and retrieve the status quo ante. We also note that KIOL-FM's operation from the site north of LaMesa will put its main studio far outside its principal community (3.16 mV/m) contour, in violation of 47 C.F.R. §73.1125. It will therefore be required to request special temporary authorization to maintain its studio at the current location while it arranges to relocate the studio or seek a waiver of the studio location rule.

confronted. KLZK has not, for example, shown why it could not resume operations as a Class A station on Channel 282. We believe that KLZK's response is insufficient to warrant favorable action on its STA request, as it does not fully describe the necessity for remaining silent.⁸ We further note that KLZK's license renewal application (File No. BRH-900315UC) remains pending because of the station's silence and because the radiofrequency ("RF") radiation information required in the application remains incomplete. Accordingly, action on KLZK's request to remain silent and license renewal application will be held in abeyance pending its submission of additional information. Within 30 days of the date of this letter, KLZK shall provide a detailed explanation of the specific steps it has taken and plans to take to return the station to the air once KMMX has returned to its former facilities. Included in the explanation should be a detailed timetable and the target date for the resumption of broadcasting, along with any additional items (such as correspondence, receipts, etc.) which would illustrate the extent of its efforts to return to the air. Failure on the part of KLZK to demonstrate that its operations would be in compliance with the Commission's RF radiation standards in 47 C.F.R. §1.1307(b), to commence operation on Channel 282,⁹ and to file an acceptable application to implement its Channel 282C2 upgrade during this 60-day period will result in dismissal of KLZK's renewal application for failure to prosecute or other action looking toward deletion of KLZK's call letters and licensing of a new party to serve Brownfield.

Accordingly, IT IS ORDERED, That modification application nos. BPH-871214ID and BPH-871214IE ARE DISMISSED, and Station KLZK's January 6, 1993 request for extension of authority to remain silent IS HELD IN ABEYANCE. IT IS FURTHER ORDERED, That the request for extension of special temporary authorization filed on behalf of KMMX and KIOL-FM on September 14, 1988 IS GRANTED, and the authority granted on March 25, 1988 IS EXTENDED for 90 days from the date of this letter. IT IS FURTHER

⁸ Pursuant to 47 U.S.C. § 309(f), the Commission is authorized to grant an STA in cases of "extraordinary circumstances requiring temporary authorizations in the public interest and when delay in the institution of the temporary operations would seriously prejudice the public interest." Temporary authority can be granted only if a statement accompanying the request is provided which explains in detail the circumstances which justify the request. When proper circumstances have been shown, the Commission is authorized to grant special temporary authorization for up to one hundred and eighty days under 47 C.F.R. § 73.1635(a)(4).

⁹ Due to yet another complication, KLZK may not resume operation on Channel 280A. During the pendency of this proceeding, and in reliance upon the upgrade of the Brownfield allotment to Channel 282C2, the Commission upgraded the allotment of station KKYN-FM, Plainview, Texas from Channel 280A to Channel 280C1. Report and Order in MM Docket No. 88-571, 4 FCC Rcd 8788 (Chief, Allocations Branch, 1989). KKYN-FM has applied for and been granted a construction permit (BPH-901131IA) to implement that upgrade. KKYN-FM's commencement of program testing with its increased facilities will preclude KLZK from operating on Channel 280A. The LaMesa/Brownfield matter will not delay KKYN-FM's commencement of improved service.

ORDERED, That within 90 days of the date of this letter, KMMX and KIOL-FM shall either: (i) commence operation with the facilities approved in assignment applications BAPH-871214GI and BALH-871214GH; or (ii) file assignment applications to return to the status quo ante, in which case they each must file a request for special temporary authorization to cover operation during the transition period. The request filed by KIOL-FM should also request special temporary authorization to operate with its main studio at its current location pending relocation of the studio to a site which complies with 47 C.F.R. § 73.1125 or the filing and consideration of a request for waiver of that rule.

Sincerely,

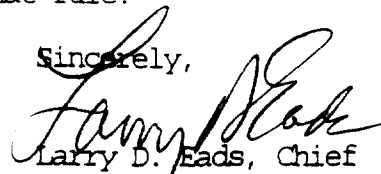

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

EXHIBIT B

363 (8) (8)

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

MAR 25 1988

MAIL FRANCHISE

MAR 25 1988

IN REPLY REFER TO:
Signed by
mailed
8920-MW

Barry W. Sheridan, Esq.
Smith, Carter, Rose, Finley & Hofman
P.O. Box 2540
San Angelo, TX 76902-2540

Lawrence J. Bernard, Jr.
Ward & Mendelsohn
1100 Seventeenth Street, N.W.
Suite 900
Washington, D.C. 20036

In re: KLSC(FM), La Mesa, Texas
West Texas Broadcasting Co., Inc. ("WTB")
BAPH-871214GI
BPH-871214IE

KUFO(FM), La Mesa, Texas
Giraffe Communications, Inc., debtor in
possession ("Giraffe")
BALH-871214GH
BPH-871214ID

Gentlemen:

This letter is in reference to: (i) the applications of WTB to assign the construction permit¹ of station KLSC(FM), La Mesa, Texas to Giraffe, and to change the station's operating frequency from Channel 268CI to 284CI; (ii) the application of Giraffe to assign the license of KUFO(FM) of WTB² and to change the station's operating frequency from channel 284CI to 262CI; and (iii) the objection to KLSC's proposals, filed on behalf of Mr. Galen Gilbert, a creditor of Giraffe, on December 14, 1987.

1 A license to cover the construction permit has been filed.
BLH-870909KA.

2 On February 17, 1988, the Commission granted a "short form" application for assignment of licenses of KUFO(FM) and KBYG, La Mesa, Texas from Giraffe Communications, Inc. to Giraffe Communications, Inc. debtor-in-possession. These applications (BAL-880128EG, BALH-880127EH) were filed pursuant to a court order issued in response to Giraffe's voluntary petition for Bankruptcy. See Order in Case No. 687-60167, dated October 2, 1987 (U.S. Bankruptcy Court-N.D. Texas).

In order to improve coverage by eliminating interference within KLSC's desired service area, WTB and Giraffe wish to switch frequencies; KLSC(FM) would then operate on channel 284C1 rather than its currently authorized 262C1, and KUFO(FM) would switch from Channel 284C1 to 262C1. On September 9, 1987, the parties filed a "Joint Request for Order Modifying License to Specify New Operating Facilities" to accomplish these goals. This request was denied by the Chief, Audio Services Division, on November 20, 1987, primarily because such an order was deemed inappropriate for accomplishing the desired goal. During an informal meeting with the Commission's staff, it was agreed that the parties' best recourse would be to file jointly for assignment of licenses and for modification of licenses to specify operation on the desired frequency. This was done on December 14, 1987. In the cover letter accompanying the December 14 filing, the parties requested that the Commission grant KLSC(FM) and KUFO(FM) special temporary authority to operate with the facilities specified in the modification applications, pending final approval of those applications.

On December 14, 1987, Mr. Gilbert's objection to the KLSC(FM)'s proposal was filed. In this pleading, Mr. Gilbert pointed out that Giraffe had petitioned for bankruptcy and that he was one of Giraffe's creditors. Mr. Gilbert then contends that he agreed to Giraffe's proposal to switch frequencies if Giraffe's outstanding debt to him was reduced by \$25,000. Because "it appears that [Giraffe] will not make this payment," Gilbert rescinded his permission and stated his desire for KLSC'S frequency to remain at Channel 262C1 (104.7MHz).

Gilbert's complaint appears to be founded in a contractual dispute, directed at private interest rather than public interest considerations. The Commission has consistently held that it is not the proper forum for the resolution of such private disputes, and that the parties, if they deem it advisable, should seek redress in a local court of competent jurisdiction. See, e.g., John F. Runner, Receiver, 26 RR 2d 777, 778 (1976). The Commission has neither the authority nor the machinery to adjudicate alleged claims arising out of private contractual agreements between parties. Transcontinent Television Corp., 21 RR 945 (1961). "Thus, as a matter of long-standing policy, the Commission does not assume jurisdiction in contractual or debtor-creditor controversies involving broadcast licenses, recognizing that such matters are generally private in nature and appropriately left to the local courts for resolution." Letter to Roy J. Harris, May 14, 1976. While Mr. Gilbert has argued (and indeed the licensee has admitted) the existence of bankruptcy proceedings involving Giraffe, he has not shown how a grant of the present requests forecloses remedies available through local or bankruptcy court or that the matter requires deferral of a decision on the application or its designation for hearing. Absent some word of direction from the

Bankruptcy Court for the Western District of Texas³ or some other local court of competent jurisdiction, we do not believe that the public interest warrants deferral, denial or designation of those proposals. However, we should point out that a Commission action merely authorizes the parties to proceed with the transaction and does not prejudice any relief to which the parties may be ultimately entitled under civil suit.

Accordingly, IT IS ORDERED, That: (i) the application (BAPH-871214GI) for assignment of the permit and sale of the assets of Station KLSC(FM) from West Texas Broadcasting Co., Inc. to Giraffe Communications, Inc. IS GRANTED; (ii) the application for assignment of license and sale of the assets of Station KUFO(FM), La Mesa, Texas, from Giraffe Communications, Inc. debtor-in-possession, to Texas Broadcasting Co., Inc., IS GRANTED; and (iii) the December 15, 1987 informal objection, filed on behalf of Galen Gilbert, IS DENIED. Additionally, IT IS ORDERED that the request for grant of special temporary authority made by WTB and Giraffe, to operate with facilities specified in applications numbered BPH-871214IE and BPH-871214ID, respectively, pending final Commission approval, IS GRANTED for a period of 180 days from the date of this letter. The two applications will be processed in due course.⁴ These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely



Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: Gaten Gilbert
West Texas Broadcasting Co., Inc.
Giraffe Communications, Inc.

³ Giraffe has certified its financial qualifications to own and operate KLSC(FM). See application file No. BAPH-871214GI, Section III, Page 8.

⁴ To the extent these applications may be considered "contingent" within the meaning of 47 C.F.R. § 73.3517, we hereby waive the provision on our own motion.

EXHIBIT C

C

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

23 FEB 1994

In Reply Refer To:
1800B3-MW

James P. Riley, Esq.
Fletcher, Heald & Hildreth
11th Floor, 1300 North 17th Street
Rosslyn, Virginia 22209

Lawrence J. Bernard, Esq.
Suite 504
2000 L Street, N.W.
Washington, D.C. 20036

In re: KMMX(FM)/KIOL-FM,
LaMesa, Texas
Petition for Partial
Reconsideration

Gentlemen:

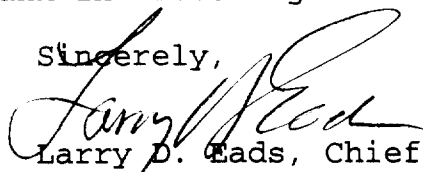
This letter refers to your requests, Filed on February 7 and February 11, 1994, respectively, that the termination date of the Special Temporary Authorization ("STA") pursuant to which Station KMMX(FM) and KIOL-FM currently operate be extended for 180 days.¹ You indicate that the involved parties have reached an agreement which allegedly would alleviate the Commission's spacing concerns, and you state that the additional time would enable you to submit and discuss the proposal with appropriate Commission staff members.

We will treat your requests as petitions for partial reconsideration of the December 1 letter with respect to the automatic termination of the STAs. We believe that the additional time will enable us to review the agreement and proposed solution, and thus potentially facilitate resolution of the LaMesa spacing concerns with expenditure of a minimum of resources on the part of both the stations and the Commission.

¹The STA was originally granted on March 25, 1988. It was extended for 90 days by letter dated December 1, 1993, reference 1800B3-MFW (Chief, Audio Services Division), after which it was to terminate automatically and the stations were to operate in accordance with the terms set forth in the letter.

Accordingly, your petitions for partial reconsideration ARE GRANTED, and the STAs ARE EXTENDED until June 1, 1994. We realize, however, that it may require more than 90 days to resolve the LaMesa spacing conflicts. Should you desire any additional STA extensions, you must file a request for extension (with the appropriate filing fee) with the Commission's Mass Media Services Office at Mellon Bank in Pittsburgh.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry D. Eads".

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

EXHIBIT D

(D)

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MAR 06 1996

IN REPLY REFER TO:
1800B3-MFW

James P. Riley, Esq.
Fletcher, Heald & Hildreth
11th Floor, 1300 North 17th Street
Rosslyn, VA 22209

Lawrence J. Bernard, Jr., Esq.
5224 Chevy Chase Parkway, N.W.
Washington, D.C. 20013

In re: KIOL(FM), LaMesa, Texas
100.3 Radio, Inc.
BPH-871214ID
Petition for Reconsideration
Request for Extension of Special
Temporary Authorization

KMMX(FM), LaMesa, Texas
West Texas Broadcasting Co., Inc.
Request for Extension of Special
Temporary Authorization
BPH-951016IG
Minor Modification of Facilities

Dear Counsel:

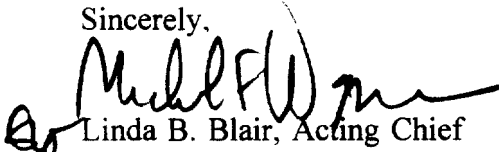
This letter responds to: (1) the December 30, 1993 petition for reconsideration of the dismissal of the above-captioned application to modify the facilities of station KIOL(FM), LaMesa, Texas, filed on behalf of 100.3 Radio, Inc.; (2) the June 1, 1994 requests for extension of special temporary authorization ("STA") to permit stations KIOL(FM) and KMMX(FM) to continue present operations pending resolution of the longstanding and well-documented allotment problem involving the two stations; and (3) the application (File No. BPH-951016IG) by station KMMX(FM), La Mesa, to modify its facilities to operate as a Tahoka, Texas station in accordance with the Report and Order in MM Docket No. 95-88, 10 FCC Rcd 11,018 (M.M. Bur. 1995).

On March 5, 1996, counsel for KIOL(FM) submitted a "Conditional Request for Dismissal" of its petition for reconsideration, expressly conditioned on the grant of BPH-951016IG.

We have evaluated KMMX' modification application and find both that it is fully in accord with all applicable Commission rules and that its grant will further the public interest, convenience and necessity. That application will be granted below. Additionally, in order to preserve present broadcasting service by KIOL(FM) and KMMX(FM) while the new KMMX facilities are being constructed, we will grant the STA extension requests.

Accordingly, KIOL's Conditional Request IS GRANTED and its December 30, 1993 petition for reconsideration IS DISMISSED. Additionally, the application (BPH-951016IG) to modify the facilities of Station KMMX IS GRANTED. Finally, the June 1, 1994 requests of Stations KIOL and KMMX for extension of special temporary authorization ARE GRANTED and the STA's ARE EXTENDED for a period of 180 days from the date of this letter.

Sincerely,


Linda B. Blair, Acting Chief
Audio Services Division
Mass Media Bureau

cc: Southwestern Broadcasting Corporation

EXHIBIT E

⑤

ANN BAVENDER*
 KAREN L. CASSER*
 ANNE GOODWIN CRUMP*
 VINCENT J. CURTIS, JR.
 RICHARD J. ESTEVEZ
 PAUL J. FELDMAN*
 ERIC FISHMAN*
 RICHARD HILDRETH
 FRANK R. JAZZO
 ANDREW S. KERSTING*
 KATHRYN A. KLEIMAN
 EUGENE M. LAWSON, JR.
 HARRY C. MARTIN
 GEORGE PETRUTSAS
 LEONARD R. RAISH
 JAMES P. RILEY
 KATHLEEN VICTORY*
 HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

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 RUSSELL ROWELL
 (1948-1977)

RETIRED

EDWARD F. KENEMAN

CONSULTANT FOR INTERNATIONAL AND
 INTERGOVERNMENTAL AFFAIRS

SHELDON J. KRYSS
 U. S. AMBASSADOR (RE)

OF COUNSEL

EDWARD A. CAINE*

WRITER'S NUMBER
 (703) 812-

0438

June 28, 1996

VIA HAND DELIVERY

Mr. William F. Caton
 Acting Secretary
 Federal Communications Commission
 1919 M Street, N.W., Room 222
 Washington, D.C. 20554

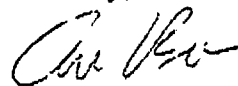
Re: KMMX(FM)
 Lamesa, TX
Notification of operation pursuant to license

Dear Mr. Caton:

This letter is to advise the Commission that the FM station licensed to Lamesa, Texas operating on 104.7 MHZ, which has to this date been identified by call sign KMMX and for which the license has this date been assigned from West Texas Broadcasting Co., Inc. to 100.3 Radio, Inc., has terminated operations pursuant to special temporary authority (an STA) last extended on March 6, 1996 and has commenced operations pursuant to its license.

If questions arise, please contact the undersigned attorney.

Sincerely,



Ann Bavender
 Counsel for 100.3 Radio, Inc.

cc: Michael Wagner, Esq. (via hand)

EXHIBIT F

DECLARATION OF THOMAS CRANE

I, Thomas Crane, hereby declare under penalty of the laws of perjury that the following is true to the best of my knowledge and belief:

1. I am the President of Southwestern Broadcasting Corporation ("Southwestern") whose application for renewal of license for FM radio station KLZK, Brownfield, Texas, has been designated for hearing by the Audio Services Division of the Federal Communications Commission ("FCC").

2. In approximately August or September of 1990, I had several telephone conversations with FCC staff members concerning a then pending application for permission to construct new Class C2 facilities for KLZK (then KLVC), File No. BPH-891026IC on Channel 282C2. I was told that said application could not be granted because the facilities proposed therein were short-spaced under the FCC's rules to the operation of KMMX (then KLSC), Lamesa, Texas, on Channel 284C1 pursuant to Special Temporary Authority ("STA") issued by the FCC. I was told by one FCC staff member that the short-spacing problem was an issue that should be negotiated between KLZK, KMMX and KIOL, Lamesa, Texas, which had previously operated on Channel 284C1. Southwestern's application for the Class C2 facilities was dismissed by the FCC in a letter dated March 17, 1992. Although the relatively minor errors which caused the FCC to dismiss the application were easily corrected, I did not consider refileing it for several years because the operation of KMMX under its STA made it impossible to propose any facilities on Channel 282C2 which could serve Brownfield.

3. After discussing the conflict between the operation of KLZK on Channel 282C2 and the STA operation of KMMX on Channel 284C1 with an engineering consultant, I sent a letter dated October 12, 1990, to the licensee of KIOI proposing a solution to the problem. When I was unable to obtain approval of my proposal from the licensee of KIOI, I addressed a letter to the FCC on January 10, 1991, asking it to order the other parties to adopt my proposal. The FCC responded to my request by letter dated January 30, 1991, but stated therein that a solution should just be agreed to by the parties and then submitted to the FCC for implementation.

4. I continued to pursue negotiations of a resolution of the conflict, primarily through contact with Lawrence J. Bernard, Jr., counsel for the licensee of KMMX. On June 17, 1992, Mr. Bernard sent me a letter in which he proposed removal of the Channel 284C1 frequency authorized to KMMX under the STA to the KIOI site south of Lamesa where it had been used by KIOI before 1988. I reviewed his proposal and immediately told him Southwestern would support it because under his plan Southwestern could then construct Class C2 facilities for KLZK at Brownfield. However, Mr. Bernard was unable to obtain KIOI's approval of his proposal at that time.

5. In approximately April of 1993 I learned that members of the Commission's staff wanted to meet with counsel for KIOI, KMMX and me to explore a solution to the problem. I could not attend, but Mr. Bernard told me immediately thereafter that the meeting had been attended by the then Chief of the FCC's Audio Services Division, the Chief of the FCC's FM Branch and other FCC personnel and that various proposed solutions to the conflict had been discussed. He also told me that he and counsel for KIOI had agreed

to continue negotiations after the meeting. Following the meeting, I discussed the matter further with Mr. Bernard on several occasions. By early Fall of 1993, Mr. Bernard told me that KIOL and KMMX had agreed in principle to the solution outlined in Mr. Bernard's June 17, 1992 letter, and I agreed that Southwestern would pay \$5,000 toward reimbursement of KMMX's expenses in prosecuting the agreement on or about December 31, 1993, I executed an Agreement with the licensees of KIOL and KMMX proposing a solution to the conflict.

6. Following designation of the KLZK renewal application for hearing on April 29, 1996, I obtained permission to use a new transmitter site for KLZK to operate on Channel 282C2, and prepared an application to the FCC for new Class C2 facilities at the site. The application was filed with the FCC on May 8, 1996. Subsequently, I prepared the projection of my expenses, Attachment I hereto, and obtained the bank letter, Attachment II hereto.

7. Southwestern is now ready to construct the new facilities proposed in the May 8, 1996 application as soon as a permit for those facilities is issued. I estimate that the new facilities can be constructed and KLZK returned to the air within 90 days of the date we receive a permit.

Thomas Crane

Signed and dated this _____ day of July, 1996.

**PROJECTED COSTS OF CONSTRUCTION AND
OPERATION OF NEW FM RADIO STATION
KLZK-FM 104.3**

I. CONSTRUCTION COSTS

Equipment (Harris Corp. quote Includes complete Turn Key Transmitter and Studio)	\$121,000.00
Additional Installation Engineering	\$10,000.00
Purchase Tower	\$40,000.00
Miscellaneous	1,000.00
Total Construction Costs	\$172,000.00

II. OPERATING COSTS

Studio Rent (4 months) (Due to Company owning an existing studio site)	\$0.00
Tower Rent (4 months) (Due to Company owning an existing tower site)	\$0.00
Utilities	\$1,500.00
Insurance	\$250.00
Supplies	\$300.00
Programming Services (Due to existing barter contract)	\$0.00
Debt Service	\$2,500.00
Total Operating Costs	\$4,550.00
Three Months Operations	\$13,650.00

III. PERSONNEL COSTS

General Manager (4 months) (Due to Thomas Crane handling these duties)	\$0.00
Sales Manager (4 months)	\$8,000.00
P.D./Air Talent (3 months)	\$5,250.00
Air Talent (3 months)	\$4,500.00
Office Manager (3 months)	\$4,500.00
Total Salaries	\$22,250.00
Payroll Taxes @ 11%	\$2,447.50
Total Personnel Costs	\$24,697.50